



U.S. Department of Justice

Environment and Natural Resources Division

JCC:LMG
90-11-3-608AEnvironmental Enforcement Section
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June 10, 1996

ATTORNEY/CLIENT PRIVILEGED
ATTORNEY WORK-PRODUCTVIA FAX THEN U.S. MAIL

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Re: United States v. NL Industries, Inc., et al.
Civ. No. 91-578-JLF / DOJ # 90-11-3-608A

Dear John and Paul:

As we mentioned on the phone, we expect that the City of Granite City will file another motion for a temporary restraining order to force U.S. EPA to cease remediation of residential properties at the Site. That motion will probably be filed either today or tomorrow. The anticipated basis for the motion is the release of the Bornschein report.

Although we are already preparing a substantive legal response to that motion and will need your assistance with a factual and technical response, we would like to file a legal response immediately to the procedure the City intends to employ to stop the work. We need your immediate assistance, if possible, to each prepare a declaration attesting to several

EPA Region 5 Records Ctr.



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issues concerning the Bornschein report. Specifically, we would like to point out for the court: i) the Bornschein report is not very professional and its conclusions do not flow from the data summaries provided; and ii) the data underlying the report must be provided to each of you to adequately analyze the report and that this analysis is critical to proper judicial evaluation.

The following are some of the points I came up with in my lay, preliminary review of the report. Of course, it goes without saying, your declarations must be of your own independent evaluation and conclusions. If true, these points may enable us to postpone a hearing on the City's motion in order to perform further analysis on the data.

1. Lack of data provided:
 - we need the key to the data-set in Appendix B
 - we need the IDPH paint data set with addresses which was verified by Bornschein's XRF study
 - we need the exact locations of sampling (soil, dust, paint) at each residence (including maps)
 - we need the exact date of each sample
 - we need all documents reflecting homeowner interviews if any
 - Figure 5-2 is missing
 - we need any data not used in compiling the report (data thrown out)
2. Faulty study:
 - no pre-testing cleaning
 - no control group
 - not enough statistical information
 - reference houses are not "reference"
3. Conclusions assume facts not presented:
 - available data in Admin. Record on dust suppression for the pile not reflected in report - which data supports opposite conclusion than report
 - available data in Admin. Record of air monitors during remediation and surrounding pile not reflected in report - which data supports opposite conclusion than report
 - report is replete with qualifiers that do not permit scientific conclusions (and that this is unprofessional)
 - report does not indicate that EPA's activities are causing injury - only that EPA's cleanup is not providing predicted lead exposure reductions
4. Transfer coefficient was not studied:
 - no such study was designed
 - no controls
 - the goals of the study (page 1, para 2) does not include transfer coefficient

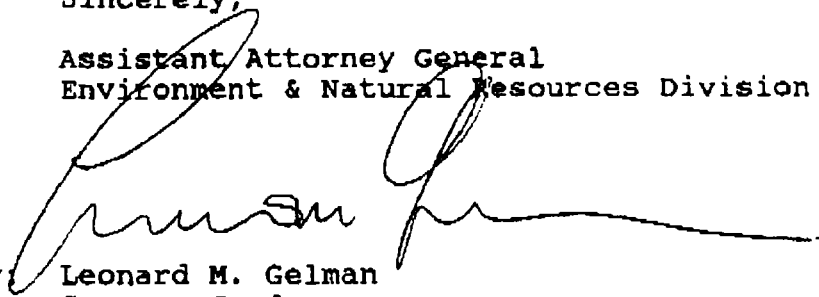
- transfer coefficient information cannot flow from the data presented

Again, any observation you can make that will support the need for the data, and the lack of scientific justification in the report to stop cleanup work, will be helpful. I have attached to this letter a form for your declarations.

Feel free to call Lee Gelman (202) 514-5293 or Jack Grady (202) 514-4051 anytime to discuss these issues.

Sincerely,

Assistant Attorney General
Environment & Natural Resources Division


by: Leonard M. Gelman
Jack H. Grady
Environmental Enforcement Section

cc: Sean Mulroney, Esq., U.S. EPA
Brad Bradley, RPM U.S. EPA
Sheri Bianchin, RPM U.S. EPA
Pat Van Leeuwen, Toxicologist U.S. EPA
Robin Juni, DOJ/ENRD/EDS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,

Plaintiff,

v.

NL INDUSTRIES, INC., et al.,

Defendants,

and

CITY OF GRANITE CITY, ILLINOIS,

LAFAYETTE H. HOCHULI, and

DANIEL M. McDOWELL,

Intervenor-Defendants.

C.A. No. 91-CV578-JLF

DECLARATION OF

I, _____, in accordance with 28 U.S.C. § 1746,
declare as follows:

I declare under penalty of perjury, that the foregoing is true
and correct to the best of my knowledge.

Executed on this ____ day of June in _____

/sign/